



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gott Corporation

File: B-222586, B-223260

Date: August 5, 1986

DIGEST

1. Contracting agency reasonably found that protester's bid under indefinite quantity invitation for bids (IFB) was excessive where the bid was significantly higher than both the low bid under the current IFB and the price at which award was made under the prior requirements contract for the same item. The fact that the protester's current bid was close to the price at which award to the protester was made under a prior definite quantity procurement for the item does not indicate that the current bid was reasonable since the prior procurement was conducted on an exigency basis and the agency paid a premium price for the item because the protester was the only bidder with sufficient stock on hand to meet the agency's needs.
2. Where no award could be made under indefinite quantity IFB because the low bid had expired and remaining two bids were reasonably found to be excessive, contracting agency properly issued new solicitation to meet its needs for the item being procured.
3. Protest that synopsis of solicitation was not properly published in Commerce Business Daily is denied as the protester actually knew of the procurement in time to submit an offer and has not specifically challenged agency's determination that the urgent nature of the procurement made it exempt from publication requirement.

DECISION

Gott Corporation protests the rejection of its bid under invitation for bids (IFB) No. 9FCO-OKX-A-A1252/85 issued by the General Services Administration (GSA) for an indefinite quantity of 1-quart vacuum bottles. Gott also challenges GSA's subsequent decision to issue a definite quantity solicitation (request for proposals (RFP) No. 7PRD-69896-1/R4/7FX) for 1-quart bottles, instead of making award under the IFB. We deny the protest.

GSA planned to award requirements contract for various sizes of vacuum bottles under the IFB, issued by GSA's region 9 on November 18, 1985,

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with bids due on December 18. Three bids were received for the 1-quart bottles, from Japan Oxygen, Inc. (\$12.90/each), Alpine Research, Inc. (\$19.57/each), and Gott (\$21.44 to \$21.62/each, depending on delivery location). GSA states that it was unable to make a responsibility determination regarding Japan Oxygen, the low bidder, before its bid expired, and Japan Oxygen refused to extend its bid acceptance period. The contracting officer found Alpine's and Gott's bids unreasonable as to price and rejected both bids. Consequently, no award was made for the 1-quart bottles under the IFB. Alpine and Gott were notified that their bids had been rejected by letters dated May 20, 1986.

GSA states that in March 1986, another GSA region, region 7, received an urgent request for 1-quart vacuum bottles to replenish its critically short stock of the item. In mid-April, the region 7 contracting officer contacted the contracting officer responsible for the indefinite quantity IFB in region 9 and inquired about the status of the contract award for the 1-quart bottles under the IFB. The record shows that the region 7 contracting officer was advised that no award for the 1-quart bottles would be made under the IFB. As a result, region 7 issued an RFP for a definite quantity of the 1-quart bottles on May 7. Offers were received from two firms, Japan Oxygen and Alpine Research. Gott was included on the list of firms to whom the RFP was sent, but chose not to submit an offer.

Gott first challenges GSA's rejection of its bid under the region 9 IFB, arguing that its bid price was not excessive. Since its bid price was reasonable, Gott argues, it was improper for GSA to cancel the IFB for the 1-quart bottles and instead issue the new RFP for the same items. Gott contends that GSA rejected its bid and issued the RFP so that award ultimately could be made to Japan Oxygen, which had submitted the lowest bid under the IFB but whose bid had expired before the agency completed its responsibility determination.

With regard to GSA's rejection of Gott's bid, the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(6) (1985), permits cancellation of an IFB after bid opening if the prices of all the otherwise acceptable bids are unreasonable. Such a determination is a matter of administrative discretion which we will not disturb unless it is clearly unreasonable or there is a showing of bad faith or fraud on the part of the contracting officer. Western Roofing Service, B-219324, Aug. 30, 1985, 85-2 CPD ¶ 255. Here, both Gott's bid (\$21.44 to \$21.62) and Alpine's bid (\$19.57) were significantly higher than Japan Oxygen's bid (\$12.90). The contracting officer also found that the two bids were significantly higher than the bids received under the prior procurement for 1-quart bottles in 1984. Three bids were received under that solicitation; award was made to the low bidder at \$12.25, the next low bid was \$12.98, and Gott bid \$20.07.

We see no basis on which to question the reasonableness of the contracting officer's finding that Gott's bid was excessive. A determination of price reasonableness may be based on comparisons with a

government estimate, past procurement history, current market conditions, or any other relevant factors. Omega Container, Inc., B-206858.2, Nov. 26, 1982, 82-2 CPD ¶ 475. Here, Gott's bid was approximately 65 percent higher than the low bid under the current IFB and approximately 75 percent higher than the price at which award was made under the prior requirements contract.

Gott argues that its bid under the current IFB (\$21.44 to \$21.62) is not excessive when compared to its offer (\$20.50) under another prior definite quantity RFP for 1-quart bottles under which Gott received award. According to GSA, the RFP Gott refers to was issued to fill an urgent need for 1-quart bottles which resulted from termination of the predecessor requirements contract. Of the six offerors GSA contacted in connection with the replacement solicitation, only Gott had sufficient stock available to meet the agency's needs. As a result, GSA states, it decided to pay a premium price to Gott for the bottles.

In light of the exigent circumstances under which the procurement was conducted, we do not believe that Gott's price under the prior definite quantity RFP serves as a valid comparison to determine the reasonableness of Gott's price under the current IFB. On the contrary, we find that the contracting officer acted reasonably in finding Gott's bid as excessive based on a comparison with the bids under the current IFB and the prior requirements contract. Therefore, since no award could be made under the IFB due to expiration of the low bid and the unreasonable prices of Gott and the other bidder, GSA acted properly in issuing the new RFP to meet its needs for the 1-quart bottles.

Gott argues that the real reason for the rejection of its bid was to allow award to be made to Japan Oxygen under the resolicitation. In support of its contention, Gott relies on the May 20 letter from GSA notifying Gott that its bid was rejected as unreasonable. Gott argues that the fact that the letter was not sent until after the new RFP was issued demonstrates that GSA's determination that Gott's bid was excessive was not the real basis for rejecting its bid. We disagree. While there was a delay in notifying Gott that its bid had been rejected, the delay does not alter the fact that the contracting officer reasonably found Gott's bid to be excessive based on a comparison with other relevant prices. Further, as noted above, the record shows that at least as early as mid-April, the region 9 contracting officer had decided that no award would be made under the IFB because the bids were unreasonable. We find no evidence in the record to support Gott's contention that GSA's rejection of its bid was based on any factor other than its excessive price.

In its initial submission, Gott also contended that GSA improperly failed to publish a synopsis of the RFP in the Commerce Business Daily (CBD). The record shows that Gott was provided with a copy of the solicitation and in fact knew about the RFP in time to submit an offer if it wished to do so. Thus, even if the agency erroneously failed to publish notice in the CBD, that failure obviously did not prejudice the protester.

In any event, in its report on the protest GSA stated that the RFP was exempt from the publication requirement because of the urgent nature of the procurement, as provided in FAR, 48 C.F.R. § 5.202(a)(2). In its comments on the GSA report, Gott made no attempt to respond to GSA's position and we see no basis in the record on which to find GSA's position unreasonable.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel